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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,329	05/23/2005	Hendricus Antonius Hoogland	294-211 PC'D/US	8654
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HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791			EXAMINER KUHN, MART K	
			ART UNIT 3637	PAPER NUMBER
			MAIL DATE 04/09/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/529,329

**Applicant(s)**HOOGLAND, HENDRICUS  
ANTONIUS**Examiner**

Mart K. Kuhn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 13-18 and 21-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 19, 20 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2005 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 13–18 and 21–23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10 May 2007.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “12” has been used to designate both a honeycomb structure and cross supports. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The disclosure is objected to because of the following informalities: inconsistent use of reference characters, such as “honeycomb structure 12” (page 6, line 27) and “cross supports 12” (page 6, line 30). Appropriate correction is required.

***Claim Objections***

4. Claim 19 is objected to because of the following informalities: in line 3, the word "stinger" should be --stringer--. Appropriate correction is required.

***Claim Rejections—35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1–12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 1 recites the limitation "the longitudinal direction of the cross supports" in its last line. There is insufficient antecedent basis for this limitation in the claim.

8. Claims 2–8, 10 and 11 each recite the phrase "the supporting means". There is insufficient antecedent basis for this limitation in the claims. It is unclear whether the recitations are intended to refer to the first supporting means, the second supporting means, or both.

9. Regarding claims 7, 8 and 12, the phrases "in particular" and "preferably" render the claims indefinite because it is unclear whether the limitation(s) following the phrases are part of the claimed invention. See MPEP § 2173.05(d). For the purposes of this examination, the limitations following the phrases "in particular" and "preferably" are not considered part of the claimed invention.

10. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex*

*parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 8 recites the broad recitation "between 5° and 175°", and the claim also recites "approximately 90°" which is the narrower statement of the range/limitation. For the purposes of this examination, the narrower range is considered merely exemplary.

11. Claims 8, 9 and 12 each recite "stringers" and "bearing elements" in the bearing construction. As stringers and bearing elements in the bearing construction are already recited in claim 1, it is unclear whether the claims refer to the previously recited limitations. The claims can be read to include the same elements twice, and are therefore indefinite. See MPEP § 2173.05(o).

12. Claim 12 recites the limitation "a supporting element" in lines 4–5. It is unclear whether this limitation is the same as the previously recited "first and second supporting means" recited in claim 1, or is intended as a separate and distinct structure. For the purposes of this examination, the supporting element is considered as one of the first supporting means.

#### ***Claim Rejections—35 USC § 102***

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

14. Claims 1–10, 12, 19 and 20, as best understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Apps, US patent 6,955,128. Apps teaches a pallet (10) having a top deck (12) and a bearing construction (14) both made of plastic (col. 5, lines 47–51); the bearing construction having stringers (82, 86, 90) extending in a longitudinal direction and having bearing elements (26) thereon, and cross supports (80, 84, 88) at right angles to the stringers; first (50, 54, 58) and second (52, 56, 60) supporting means, the first supporting means extending parallel to the stringers in the bearing construction and the second supporting means extending parallel to the cross supports.

Regarding claims 2–7, the first and second supporting means are manufactured from metal or plastic (col. 7, lines 8–15), prevent creep in the top deck and bearing construction, have a higher modulus of elasticity than the top deck and bearing construction, and enhance the rigidity of the top deck.

Regarding claims 8–10 and 12, as noted above, the bearing construction includes parallel stringers (82, 86, 90) with bearing elements (26) extending thereabove, each stringer having a first supporting means (50, 54, 58) extending parallel thereto, the second supporting means (52, 56, 60) extending at an angle to the stringers, the first and second supporting means being confined in plastic of the top deck and bearing construction, and the pallet having spaces suitable for the insertion of tines of a forklift.

Regarding claims 19 and 20, Apps teaches a pallet having every structural and functional limitation imposed by the claimed method, thereby inherently teaching the claimed steps.

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15. Claim 24 is rejected under 35 U.S.C. 102(e) as being anticipated by Koefeld, US patent 6,584,914. Koefeld discloses a pallet (10) having a top deck (12) molded from plastic; a bearing construction (14) molded from plastic and attached to the top deck; and supporting means (36, 38) integrally molded within the top deck and bearing construction (col. 4, lines 48–61).

***Claim Rejections—35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Apps as applied to claim 10 above, and further in view of Koefeld. Apps discloses a pallet substantially as claimed, having supporting means confined in the plastic of a top deck and bearing construction, and teaches the use of an injection molding process in the construction of the pallet (col. 5, line 50), but does not specifically teach that the supporting means are injection molded in the pallet. Koefeld teaches a pallet (10) having a top deck (12) and bearing construction (14) molded from plastic, and supporting means (36, 38) substantially confined in the plastic of the top deck and bearing construction, further teaching that the supporting means are injection molded in the pallet (col. 4, lines 48–61). Thus Apps discloses a pallet upon which the claimed injection molding of the supporting means can be seen as an improvement, and Koefeld teaches a comparable pallet improved in the same way as claimed. One of ordinary skill in the art could have applied the known injection molding, as taught by Koefeld, in the same way to the pallet of Apps, with predictable results.

***Response to Arguments***

18. Applicant's arguments, see page 7, filed 14 January 2008, with respect to the previous rejection of claim 11 under 35 U.S.C. § 112, have been fully considered and are persuasive. The rejection of claim 11 has been withdrawn.

19. Applicant's arguments with respect to claims 1–12, 19 and 20, previously rejected under 35 U.S.C. §§ 102(b) and 103(a) in view of Shuert and Wyler et al., have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and is cited on form PTO-892 enclosed herewith.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mart K. Kuhn whose telephone number is (571)272-8926. The examiner can normally be reached on M–F, 8:30am–5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Janet M. Wilkens/  
Primary Examiner, Art Unit 3637

/MKK/  
Examiner, Art Unit 3637  
4 April 2008